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EX PARTE OR LATE FILED

Robert H. Jackson  
Executive Director-  
Federal Regulatory

*Ex Parte*

February 19, 1997

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FEB 19 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

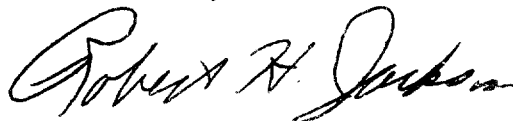
Re: *Telephone Number Portability*,  
Further Notice of Proposed Rulemaking CC Docket No. 95-116

Dear Mr. Caton:

Attached is a copy of a *Recommended Decision* in Colorado Public Utilities Commission in Docket No. 96R-484T, *In the Matter of Proposed Amendments to the Rules on Local Number Portability and Administration*, 4 CCR 723-34, (Mailed Date: Feb. 6, 1997) ("Decision"). Of interest is the conclusion that the Federal Communications Commission ("FCC") has preempted the states on the issues of jurisdiction over the number portability deployment schedule and the minimum performance criteria for number portability. The Decision defers, at least temporarily, to the FCC on the issue of cost recovery. U S WEST believes that these three conclusions are correct interpretations of the FCC's *First Report and Order* in the above-captioned docket. Please include a copy of this letter in the record.

In accordance with 47 C.F.R. § 1.1206(a)(1) of Commission's rules, the original of this letter and one copy are being filed with your office. Acknowledgment and date of receipt are requested. A duplicate of this letter is included for this purpose.

Sincerely,



Attachment

cc: Regina Keeney  
Lloyd Colling  
Linda Kinney  
Geraldine Matise  
Susan McMaster  
James Schlichting  
Don Stockdale  
Steven Teplitz

Chris Barnekov  
Neil Fried  
Kathy Levitz  
Carol Matthey  
Andre Rausch  
Lenworth Smith  
Jeannie Su  
Richard Welch

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FEB 19 1997

Decision No. R97-127

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

FEDERAL COMMUNICATIONS COMMISSION  
SECRETARY

DOCKET NO. 96R-484T

IN THE MATTER OF PROPOSED AMENDMENTS TO THE RULES ON LOCAL NUMBER  
PORTABILITY AND ADMINISTRATION, 4 CCR 723-34.

RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
KEN F. KIRKPATRICK  
ADOPTING RULES

Mailed Date: February 6, 1997

I. STATEMENT

A. This proceeding was instituted by Decision No. C96-1197, November 19, 1996. That decision was a notice of proposed rulemaking concerning amendments to the existing rules on local number portability ("LNP"). The intent of the rulemaking was stated as proposing an implementation schedule for permanent LNP; proposing a cost recovery mechanism for permanent and interim LNP; and updating the existing rule in light of current conditions. That decision further established a schedule for initial and reply comments prior to the hearing, as well as establishing a hearing date of January 24, 1997 for the acceptance of oral comments.

B. The Notice of Proposed Rulemaking was published in the December 10, 1996 edition of the Colorado Register.

C. Written comments were filed in advance of the hearing by the Colorado Office of Consumer Counsel ("OCC") and Staff of

the Commission ("Staff") jointly; U S WEST Communications, Inc. ("U S WEST"); MFS Communications Company, Inc. ("MFS"); AT&T Communications of the Mountain States, Inc. ("AT&T"); MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc. (collectively "MCI"); the Colorado Independent Telephone Association ("CITA"); and by AT&T Wireless Services, Inc. ("AT&T Wireless"). Oral comments on the proposed rules were offered at the hearing by Staff, TCG of Colorado, OCC, U S WEST, MCI, MFS, AT&T, CITA, and AT&T Wireless.

D. At the conclusion of the hearing, the undersigned authorized the filing of comments no later than January 31, 1997, concerning only the definitions of "ported telephone number", "portable NXX", and "local number portability."

E. On January 24, 1997, OCC, Staff, and MCI filed their Consensus Definitions Concerning Ported Telephone Number and Portable NXX.

## II. STATEMENT, FINDINGS, AND CONCLUSIONS

A. As noted above, this proceeding concerns the Commission's rules governing LNP. LNP refers to the concept of an end user of local exchange telecommunications service being able to retain his or her telephone number while changing providers. The Commission's current rules on LNP, found at 4 Code of Colorado Regulations 723-34 ("LNP Rules"), recognize that LNP can best be obtained by means of a database network architecture. However, the existing rules did not establish that

architecture, but rather ordered the Local Number Portability Task Force ("Task Force"), established pursuant to Commission Decision No. C95-785, to submit recommendations to the Commission as soon as practicable. This rulemaking is the result of the Commission's charge to the Task Force and the Task Force's recommendations.

B. At the same time that the Task Force was meeting, the Federal Communications Commission ("FCC") was conducting a proceeding which ultimately led to its decision in its LNP docket.<sup>1</sup> In its order, the FCC mandated that local exchange carriers operating in the 100 largest metropolitan statistical areas ("MSAs") offer long term service provider portability commencing on October 1, 1997 and concluding by December 31, 1998 according to a specific implementation schedule. Appendix F to that decision indicates that the FCC has scheduled long term service provider portability to be completed in the Denver MSA during the second quarter of 1998.<sup>2</sup> In its First Report and

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<sup>1</sup> First Report and Order and Further Notice of Proposed Rulemaking ("First Report and Order"), CC Docket No. 95-116, Decision No. FCC 96-286, released July 2, 1996.

<sup>2</sup> The Denver MSA is defined as Denver, Adams, Arapahoe, Jefferson, and Douglas Counties.

Order at ¶37, the FCC discusses its decision to adopt an LNP implementation schedule in the following words:

The 1996 Act directs this Commission to adopt regulations to implement number portability, and we believe it is important that we adopt uniform national rules regarding number portability implementation and deployment to ensure efficient and consistent use of number portability methods and numbering resources on a nationwide basis. Implementation of number portability, and its effect on numbering resources, will have an impact on interstate, as well as local, telecommunications services. Ensuring the interoperability of networks is essential for deployment of a national number portability regime, and for the prevention of adverse impacts on the provision of interstate telecommunications services or on the use of the numbering resource. We believe that allowing number portability to develop on a state-by-state basis could potentially thwart the intentions of Congress in mandating a national number portability policy, and could retire the development of competition in the provision of telecommunications services. (Emphasis added.)

C. While the word "preemption" is not contained in the paragraph quoted above, it is difficult to read that paragraph and still conclude that this Commission has any jurisdiction over the schedule for deployment of LNP. The undersigned concludes that the FCC has preempted this Commission from establishing a deployment schedule for LNP that is different than that adopted in its First Report and Order. In addition, the Administrative Law Judge ("ALJ") agrees with those commentators that argue that the FCC has exerted exclusive jurisdiction over the minimum performance criteria of LNP as discussed in paragraphs 46 through 59 of the First Report and Order.

D. The other major issue which is the subject of this rulemaking which the FCC addresses is long term LNP cost recovery. The FCC does not adopt a nationwide LNP cost recovery mechanism in the First Report and Order, but rather opens up a further rulemaking to investigate national cost recovery. The FCC decision is due in March or April 1997. The commentors differ in their suggestions as to the action this Commission should take concerning cost recovery.

E. Several commentors suggest adoption of a wait-and-see attitude, with this Commission poised to act after the FCC decision on cost recovery. Other commentors suggest that this Commission forge ahead, with one commentor suggesting that the Commission establish a cost recovery mechanism subject to "true-up." However, a true-up mechanism in this context appears problematic. A true-up generally contemplates that parties will begin paying for services, with the ultimate rate to be established later subject to refund or increased payment, with interest. In the LNP context, it is not even known who will be paying for what services. The question of refunds and/or additional payments, with interest, is not as clear cut.<sup>3</sup> Therefore this decision adopts no cost recovery rule, but rather adopts the position of those commentors suggesting a wait-and-see

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<sup>3</sup> For example, if this Commission were to adopt a user pays mechanism, and the FCC ultimately imposes cost recovery on all telecommunications carriers without regard to use, would the users that had paid into the system be entitled to refunds, and from whom?

attitude. There is, of course, no guarantee that the FCC will act clearly and concisely, and no guarantee that any rules adopted by the FCC would be effective. Nonetheless, on balance, waiting a few months for the FCC's decision should not adversely impact the implementation schedule.

F. CITA has sought to continue the special provisions for small LECs contained in the current rules on Interim LNP. CITA seeks to modify the existing rules on Interim LNP so that a small LEC's obligation to provide Interim LNP is keyed to commencement of operations by a facilities-based local exchange provider in that small LEC's service territory. The proposed change would reduce unnecessary costs for small LECs, and it is adopted.

G. CITA has also urged the Commission to adopt an exemption or suspension for small LEC's in this rulemaking from the general obligation to provide long-term LNP. However, a general exemption or suspension is inconsistent with the Telecommunications Act of 1996 and the FCC order interpreting the pertinent portion of the 1996 Act. The FCC has noted that state Commissions will need to decide on a case-by-case whether suspensions or modifications of the obligation to provide long-term LNP are warranted for individual LECs.'

H. The rules adopted establish that an independent third-party will administer the LNP database and the Service Management

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' First Report and Order, CC Docket No. 96-98, FCC 96-325, released August 8, 1996, ¶¶ 1262-1263.

System ("SMS"). The administrator will be selected by a limited liability company consisting of representatives of providers that are or will be porting numbers.'

I. Certain other changes to the rules are adopted by this decision, including the consensus definitions submitted by the OCC, Staff, and MCI. The order that follows adopts the rules essentially as suggested by the OCC at the hearing. The adopted rules contain the actual criteria for Database network architecture for long-term LNP and the standards for charges associated with interim LNP, rather than a reference to FCC rules. However, the modified reference to FCC rules (rather than the FCC decision) is utilized in connection with the long-term LNP implementation schedule.

J. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

### III. ORDER

A. The Commission Orders That:

1. The Rules on Local Number Portability and Administration, 4 Code of Colorado Regulations 723-34, are amended as set forth in Appendix 1 to this Decision.

2. The adopted rules shall be filed with the Secretary of State for publication in the next Colorado Register

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' In fact, the rules recognize what is already taking place.

along with the Attorney General's opinion regarding the legality of the rules.

3. The adopted rules shall also be filed with the Office of Legislative Legal Services within 20 days following the above reference to the Attorney General's opinion.

4. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

5. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b. If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

6. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(SBA2)

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO



KEN F. KIRKPATRICK

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Administrative Law Judge

ATTEST: A TRUE COPY

*Bruce N. Smith*

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Bruce N. Smith  
Director

g. order\484T.DOC

**RULES ON LOCAL NUMBER PORTABILITY AND ADMINISTRATION**

BASIS, PURPOSE AND STATUTORY AUTHORITY. The basis and purpose of these rules are to provide regulations concerning local number portability so that end-users can choose between authorized providers of basic local exchange services without changing their telephone number. These rules govern the creation of regulatory and technical mechanisms to establish local number portability (LNP) and provide for a number portability database network architecture.

If end-users are unable to retain their telephone numbers when changing telecommunications providers, these end-users may be deterred from responding to service and price differences among competing providers because of the expense and inconvenience involved. Therefore, local number portability promotes competition between telecommunications service providers by eliminating or mitigating a barrier to entry.

The rules are clear and simple and can be understood by persons expected to comply with them. They do not conflict with any other provision of law and there are no duplicating or overlapping rules.

These rules are issued pursuant to Sections 40-2-108 and 40-15-503(2)(b)(II) C.R.S.

**RULE (4 CCR) 723-34-1. APPLICABILITY.** These rules shall apply to all facilities-based providers of basic local exchange service.

RULE (4 CCR) 723-34-2. DEFINITIONS. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined by Colorado statute or this rule. As used in these rules, unless context indicates otherwise, the following definitions shall apply:

723-34-2.1 Limited Liability Company (LLC) means the legal entity given the responsibility of selecting and managing the NPAC in Colorado and other states that wish to join the Western Region Telephone Number Portability LLC. This entity is made up of representatives of providers that are or will be porting numbers.

723-34-2.2 Number Portability Administration Center (NPAC) means the independent third party administrator of the Service Management System (SMS) and LNP database.

723-34-2.3 Portable NXX means an NXX that the public switched telephone network, in doing call routing, recognizes an address that may require routing on the basis of something other than the dialed digits, and that the telephone company billing system, in determining which provider serves the billed telephone number, recognizes may involve a provider other than the one to which the NXX is assigned.

723-34-2.4 Ported Telephone Number means a telephone number ("TN") that is served (receives dial tone) from a switch other than the one to which the NXX (part of the TN) is assigned.

RULE (4 CCR) 723-34-3. LOCAL NUMBER PORTABILITY (LNP). If an end-user changes basic local exchange telecommunications service providers and remains within the same rate area, the

end-user shall have the option to retain his or her telephone number or numbers.

RULE (4 CCR) 723-34-4. LONG-TERM SERVICE PROVIDER NUMBER PORTABILITY.

723-34-4.1 Long-term service provider number portability, as described in Rule 3, shall be attained by means of a database network architecture.

723-34-4.2 The database network architecture employed shall meet the following performance criteria:

723-34-4.2.1 supports network services, features, and capabilities existing at the time number portability is implemented, including but not limited to emergency services, CLASS features, operator and directory assistance services, and intercept capabilities;

723-34-4.2.2 efficiently uses numbering resources;

723-34-4.2.3 does not require end users to change their telecommunications numbers;

723-34-4.2.4 does not require telecommunications carriers to rely on databases, other network facilities, or services provided by other telecommunications carriers in order to route calls to the proper termination point;

723-34-4.2.5 does not result in unreasonable degradation in service quality or network reliability when implemented;

723-34-4.2.6 does not result in any degradation in service quality or network reliability when customers switch carriers;

723-34-4.2.7 does not result in a carrier having a proprietary interest;

723-34-4.2.8 is able to migrate to location and service portability; and

723-34-4.2.9 has no significant adverse impact outside the areas where number portability is deployed.

723-34-4.3 Implementation. All facilities-based local exchange telecommunications providers shall comply with the implementation schedule at Part 52.3 of Title 47 of the Code of Federal Regulations (CFR) as adopted by the Federal Communications Commission in Decision No. FCC 96-286, dated July 2, 1996.

723-34-4.4 NPAC.

723-34-4.4.1 The long-term service provider portability database shall be administered by an NPAC. The NPAC shall be the exclusive source of LNP database information for facilities-based Colorado service providers.

723-34-4.4.2 The NPAC shall be selected and contracted to perform its duties by the LLC.

723-34-4.4.3 A regional NPAC may be selected if (a) long-term service provider portability will not be delayed and (b) costs will not be significantly increased.

RULE (4 CCR) 723-34-5. INTERIM SERVICE PROVIDER NUMBER PORTABILITY.

723-34-5.1 Until a database network architecture has been implemented pursuant to Rule 4, all facilities-based providers, except as provided in Rule 5.4, shall offer interim service provider number portability, as described in Rule 3, through the use of Remote Call Forwarding (RCF), Direct Inward Dialing (DID), and other comparable and technically feasible methods.

723-34-5.2 If an end-user changes providers and is eligible to have his or her number ported, the local exchange provider which provided the end-user's original NXX-XXXX shall port calls that are made to that end-user's number to his or her new local exchange provider regardless of the number of times the end-user has changed providers.

723-34-5.3 The charges associated with interim service provider number portability shall not:

723-34-5.3.1 give one telecommunications carrier an appreciable, incremental cost advantage over another telecommunications carrier, when competing for a specific subscriber (i.e., the recovery mechanism may not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer); or

723-34-5.3.2 have a disparate effect on the ability of competing telecommunications carriers to earn a normal return on their investment.

723-34-5.4 For an incumbent small local exchange provider as described in Section 40-15-503(2)(D) C.R.S., within thirty days after a new, facilities-based, local exchange provider obtains operating authority and commences operations within its service territory, the incumbent small local exchange provider must file tariffs with the Commission providing for interim service provider portability, as described in Rule 3 and this Rule 6.

RULE (4 CCR) 723-34-6. INCORPORATION BY REFERENCE. All material incorporated by reference into these rules comes from Part 52 of Title 47 of the Code of Federal Regulations, as adopted by the Federal Communications Commission in Decision No. FCC 96-286, July 2, 1996. These rules do not

Appendix I  
Docket No. 96R-484T  
R97-127  
February 6, 1997  
Page 6 of 6 Pages

include later amendments to or editions of the incorporated material. The Director of the Public Utilities Commission, 1580 Logan St., OL-2, Denver, CO 80203, will provide information upon request regarding how the incorporated material may be obtained or examined. Any material that has been incorporated by reference in these rules may be examined at any state publications depository library.

RULE (4 CCR) 723-34-7. WAIVER AND VARIANCE. The Commission may waive these rules and permit a variance from these rules, if not contrary to law, for good cause shown if it finds that compliance is impossible, impracticable or unreasonable.